



# PREPROPOSAL STATEMENT OF INQUIRY

(RCW 34.05.310)

CR-101 (7/22/01)

Do **NOT** use for expedited rule making

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**Agency:** Department of Ecology A.O. 03-05

**Subject of possible rule making:** This rulemaking will amend chapter 173-503 WAC Skagit River Instream Flow Rule. As a result of a Interim Memorandum of Agreement recently signed by the Department of Ecology, City of Anacortes, PUD No. 1 of Skagit County, Skagit County, the Sauk-Suiattle Indian Tribe, the Upper Skagit Indian Tribe and the Swinomish Indian Tribal Community, Ecology has agreed to initiate and conduct, and the other parties agree to support, rulemaking to amend WAC 173-503 solely for the purpose of allowing exempt wells to be used in the Upper Skagit Basin when mitigation is provided under a Ecology approved mitigation plan.

**(a) Statutes authorizing the agency to adopt rules on this subject:** Chapter 90.54 RCW (Water Resources Act of 1971); Chapter 90.22 RCW (Minimum water flows and levels); Chapter 173-500 WAC (Water resources management program); Chapter 173-503 WAC Instream Resources Protection Program – Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4).

**(b) Reasons why rules on this subject may be needed and what they might accomplish:** Chapter 90.44.050 RCW authorizes withdrawal of public ground waters of the state in an amount not to exceed 5,000 gallons per day for certain purposes without submitting an application to the Department of Ecology for a permit to appropriate such waters. These withdrawals to the extent regularly used beneficially are entitled to a right equal to that established by a permit issued under the provisions of Chapter 90.44 RCW. Minimum instreams flows established in WAC 173-503 create a water right with a priority date as of the date the rule was established (April 14, 2001). Those flows are senior to any new exempt withdrawals begun after the rule. A rule amendment is necessary to create a new administrative framework to allow new exempt withdrawals that are mitigated to be used without interruption from the senior instream flow right.

**(c) Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** Ecology has exclusive statutory authority under Chapter 90.22 RCW to establish minimum instream water flows. Consultation will occur with the Washington Department of Fish and Wildlife.

**(d) Process for developing new rule (check all that apply):**

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe) Interested parties from the Skagit River Basin and Ecology have signed an Interim Memorandum of Agreement. During rule making, draft language will be reviewed by local interested parties, primarily signature governments to the Interim Memorandum of Agreement before the filing of the CR-102. A press release and focus sheet will be written and distributed to mailing lists and email lists. A public hearing will be held to solicit comments from other interested parties.

**(e) How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:**

Dan Swenson  
Department of Ecology  
Northwest Regional Office  
3190 - 160th Ave SE  
Bellevue, WA 98008-5452

(425) 649-7270  
[dswe461@ecy.wa.gov](mailto:dswe461@ecy.wa.gov)  
Fax: (425) 649-7098

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**NAME (TYPE OR PRINT)**  
Joe Stohr

**SIGNATURE**  
Joe Stohr

**TITLE**  
Water Resources  
Program Manager

**DATE**  
4/25/03